

**Federal Defenders
OF NEW YORK, INC.**

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March 23, 2021

VIA ECF

Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
United States Courthouse
40 Centre Street
New York, New York 10007

MEMO ENDORSED

Re: *United States v. Brian Smith et al.*,
19 CR 611 and 20 CR 236 (KPF)

Dear Judge Failla:

Mr. Smith is scheduled to be sentenced this Friday, March 26 on two cases: a felony conviction at docket 20 CR 236 and a misdemeanor conviction at docket 19 CR 611. While the Pre-Sentence Report has been prepared on the felony case, the parties learned yesterday that no report has been prepared on the misdemeanor case. Pursuant to Fed. R. Crim. Pro. 32(c)(1)(A)(ii), I write to ask that the preparation of a Pre-Sentence Report in connection with the misdemeanor case be waived so that Mr. Smith can proceed with his sentencing scheduled for this week.

Fed. R. Crim. Pro. 32(c)(1)(A)(ii) allows for sentencing without a Pre-Sentence Report where “the court finds that the information in the record enables it to meaningfully exercise its sentencing authority under 18 U.S.C. 3553, and the court explains the finding on the record.” The Pre-Sentence Report already prepared provides the Court with the information it needs to sentence Mr. Smith. The parties also plan on filing sentencing submissions later today with further background information relevant to the 3553(a) factors. Lastly, in connection with the facts underlying the misdemeanor conviction, I do not anticipate any factual disputes between the parties. I am attaching the

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misdeemeanor Information and plea agreement to which Mr. Smith pleaded guilty.

At sentencing, I intend to argue for a time served sentence. The Probation Department also has recommended a time served sentence. In light of the information before the Court and the fact that the preparation of a Pre-Sentence Report will have to delay Mr. Smith's sentencing, I respectfully ask that the report's preparation be waived.

The government takes no position regarding this request.

Thank you.

Respectfully submitted,
/s/ JULIA GATTO
Julia L. Gatto
Assistant Federal Defender

cc: AUSA Christopher Clore (via ECF)

Application GRANTED.

Dated: March 23, 2021
New York, New York

SO ORDERED.

A handwritten signature in blue ink, reading "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE